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EXAMINER

JONES, HEATHER RAE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD LYNN BLAIR, MARK ALAN SCHULTZ,
and ROBERT WARREN SCHMIDT

Appeal 2009-001723
Application 10/086,649
Technology Center 2600

Decided: January 20, 2010

Before ALLEN R. MACDONALD, *Vice Chief Administrative Patent Judge*,
KENNETH W. HAIRSTON, and BRADLEY W. BAUMEISTER,
Administrative Patent Judges.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1, 2, 6-14, and 18-24 (Br. 5). Claims 3-5 and 15-17 have been indicated as containing allowable subject matter (*id.*). We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellants' invention relates to video presentations and more particularly to a method and apparatus for improved audio playback during video "trick modes," or playback modes where the play speed is faster or slower than normal play speed (Spec. 1). A decoder decodes digital audio samples corresponding to a selected portion of a video presentation (Br. 8).

[F]or fast trick modes, the decoder . . . drop[s] selected ones of the audio samples at a rate approximately corresponding to a selected trick mode video playback speed of the video presentation. A digital-to-analog (D/A) converter . . . subsequently generate[s] an audio playback signal corresponding only to a remaining set of the audio samples. The audio samples can be dropped at an average rate of approximately (n-1) of every n samples, where n is equal to the selected trick mode playback speed relative to a normal playback speed. . . .

(Br. 8). For slow speed trick modes, the decoder produces a trick mode of audio samples by repeating "selected ones of the audio samples at a rate that is inversely proportional to a selected trick mode video playback speed of said video presentation" (*id.*). A digital signal processor translates the audio samples to compensate for changed audio pitches resulting from the trick mode playback speed (*id.*).

Independent claim 1 is illustrative, reading as follows:

1. A method for playing an audio track during video trick mode playback of a video presentation, the method comprising:

reading digital data from a storage medium, said digital data representing audio programming corresponding to the video presentation;

decoding a plurality of digital audio samples corresponding to a selected portion of the video presentation from a portion of said read digital data;

repeating or dropping selected ones of said digital audio samples at a rate corresponding to a selected trick mode video playback speed of said video presentation;

transforming said digital audio samples from time domain to corresponding frequency domain audio samples; and

scaling a playback audio frequency of said frequency domain audio samples in accordance with said trick mode playback.

The Examiner relies upon the following prior art references to show unpatentability:

Shimura	US 6,658,197 B1	Dec. 02, 2003 (filed Sep. 3, 1999)
Suito	US 6,925,340 B1	Aug. 02, 2005 (filed Aug. 22, 2000)

Claims 1, 2, 6, 11-14, 18, 23, and 24 stand rejected under 35 U.S.C. § 102(e) as anticipated by Suito. Claims 7-10 and 19-22 stand rejected under 35 U.S.C. § 103(a) as obvious over Suito in view of Shimura.

Appellants assert¹ that Suito fails to disclose, among other limitations of independent claims 1 and 13, “repeating or dropping selected ones of said digital audio samples at a rate corresponding to a selected trick mode video playback speed of said video presentation” (*see* Br. 19-22, 28-29). Rather, Suito is directed to a sound reproduction method and apparatus wherein “sound absence” portions of a reproduced sound signal are at least partially deleted, and “sound presence” portions preceding and following the deleted absence portions are joined or compressed to produce a recognizable sound signal (Br. 21).

The Examiner agrees with Appellants that Suito’s sound reproduction system compresses sound tracks in this manner (Ans. 6). However, the Examiner takes the positions that Suito discloses the disputed claim limitation because (i) the sound absence portions being deleted are part of the audio sample as a whole (Ans. 6-7); (ii) Suito also discloses that some sound presence portions may be deleted as well (Ans. 7); and regardless (iii) “the claim² does not require the apparatus to be able to repeat and drop selected ones of the digital audio samples” (*id.*).

¹ Rather than repeat the arguments of Appellants or the Examiner, we refer to the Appeal Brief (“Br.”), filed July 27, 2007, and the Examiner’s Answer (“Ans.”), mailed Sep. 12, 2007, for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made, but did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

² Presumably method claim 1.

ANALYSIS

Addressing the Examiner's third position first, we find no support for the Examiner's conclusion that the appealed claims do not require the apparatus to be able to repeat and drop selected ones of the digital audio samples. The Examiner has not provided any rationale to explain or support this conclusion (*see* Ans. 3-8). To the contrary, the appealed claims contain express language requiring this capability. As noted above, independent method claim 1 expressly recites, "repeating or dropping selected ones of said digital audio samples at a rate corresponding to a selected trick mode video playback speed of said video presentation." Independent apparatus claim 13 similarly recites, "a control processor for repeating or dropping selected ones of said digital audio samples at a rate corresponding to a selected trick mode video playback speed of said video presentation."

We likewise find no support for the Examiner's conclusion that Suito discloses "repeating or dropping selected ones of said digital audio samples at a rate corresponding to a selected trick mode video playback speed of said video presentation." The fact that Suito's reproduction system drops sound absence portions and may even drop sound presence portions is not sufficient to further conclude that these portions are being dropped "*at a rate corresponding to a selected trick mode video playback speed of said video presentation.*" To the contrary, the fact that Suito primarily focuses on dropping sound absence portions seems to more likely imply that for any given video presentation, only certain audio portions will satisfy the system's sound absence criteria. As such, these particular audio portions will be dropped, regardless of the selected trick mode video playback speed.

For the foregoing reasons, then, Appellants have persuaded us of error in the Examiner's anticipation rejection of independent claims 1 and 13.

Accordingly, we will not sustain the Examiner's rejection of those claims or claims 2, 6, 11, 12, 14, 18, 23, and 24 which depend from claims 1 and 13.

With respect to the obviousness rejection of dependent claims 7-10 and 19-22, Shimura does not cure the deficiency of the rejection over Suito explained above. Accordingly, we likewise will not sustain the rejection of claims 7-10 and 19-22.

CONCLUSIONS

Appellants have shown that the Examiner erred in finding that the appealed claims do not require the apparatus to be able to repeat and drop selected ones of the digital audio samples.

Appellants have shown that the Examiner erred in finding that Suito discloses a system that repeats or drops selected ones of a digital audio sample associated with a video presentation at a rate corresponding to a selected trick mode video playback speed of said video presentation.

Accordingly, Appellants have shown that the Examiner erred in rejecting claims 1, 2, 6-14, and 18-24 under §§ 102 and 103.

DECISION

We do not sustain the Examiner's rejections with respect to all pending claims on appeal. Therefore, the Examiner's decision rejecting claims 1, 2, 6-14, and 18-24 is reversed.

REVERSED

Appeal 2009-001723
Application 10/086,649

gvw

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